

Summary and Response to Comments Re: Section 2632.5(d)(11)

**Comment No. 1:**

**Commentator:** Martin F. Sullivan, Sr., Sullivan & Sullivan, General Insurance Agency

**Date of Comment:** January 24, 2002

**Type of Comment:** Written

<b>Summary of Comment:</b>	<b>Response to Comment:</b> The Commissioner has considered the comment and has not changed the proposed regulations in response to the comment.
<b>(a) Involuntary Loss of Persistency Discount</b>  The commentator requests that the Commissioner not adopt any modification of the persistency regulation contained in California Code of Regulations, Title 10, Section 2632.5(d)(11). The commentator's grounds are that, under the proposed regulation, when an insurer transfers an entire line of its book of business to another insurer, its insureds will involuntarily lose their persistency discount.	<b>(a) Involuntary Loss of Persistency Discount</b>  While it is true that insureds changing insurers involuntarily lose their persistency discounts, California Insurance Code Section 1861.02(c) limits the ability of insurers to consider prior insurance. California Insurance Code Section 1861.02(c) contains no exception for involuntary change of insurance company. The situation is not likely to occur frequently and will not affect many insureds. Insurers obtaining a new book of business will have an incentive to price their product competitively. Additionally, through use of sequential analysis is mandated by California Code of Regulation Title 10, Section 2632.7, the weight, or premium effect, of persistency, or any other optional factor, is minimized in that it must be less than the three mandatory factors.
<b>(b) Persistency Discount as a Reflection of Driving Experience</b>  The commentator asserts that a persistency discount based on prior insurance, as applied to motorcycle riders, fairly reflects improved driving abilities of experienced motorcyclists.	<b>(b) Persistency Discount as a Reflection of Driving Experience</b>  The experience of drivers is reflected in their rates by the mandatory rating factors for years of driving experience. To cause them to be replicated in the optional rating factor for persistency is to duplicate, and unduly amplify, the statistical significance of driving experience.

<p><b>(c) Proposed Regulation Creates a Substantial Adverse Financial Impact on Consumers</b></p> <p>The commentator states that the proposed persistency regulation will have a substantial financial impact upon motorcycle riders, who largely depend on their evidence of prior insurance as a basis for receiving a discount on premium.</p> <p>The commentator indicates that “previous insurance is the only way [the commentator] can think of that verifies that a motorcycle rider has actually been riding for the past year.” Because the proposed persistency regulation will limit persistency to the amount of time insured with the present insurer or affiliate, many motorcycle riders with a history of coverage under prior insurance carriers will lose their persistency discount.</p>	<p><b>(c) Proposed Regulation Creates a Substantial Adverse Financial Impact on Consumers</b></p> <p>The proposed definition of persistency will not affect motorcycle riders as the commentator suggests. Other rating factors available to the commentator may be used, aside from persistency, to ascertain whether a rider has been riding a motorcycle recently. (See, e.g., Cal. Code Regs, tit. 10, § 2632.5, subds. (c)(1), (c)(2), (c)(3), (d)(3), (d)(4) and (d)(7).) Limiting persistency credit to renewals with the present insurer or affiliate will not prevent insurers from ascertaining whether a rider is accustomed to riding a motorcycle. Any concomitant discount, therefore, may still be realized by the insured.</p>
--	--

**Comment No. 2:**

**Commentator:** R.A. Hilliard, Hilliard & Associates Insurance Brokers

**Date of Comment:** February 15, 2002

**Type of Comment:** Written

<p><b>Summary of Comment:</b></p>	<p><b>Response to Comment:</b> The Commissioner has considered the comment and has not changed the proposed regulations in response to the comment.</p>
<p><b>(a) The Proposed Regulation Penalizes One-half to Two-thirds of the State’s Insureds</b></p> <p>The commentator asserts that one-half to two-thirds of the insureds in the State will be penalized because when they change insurers they will lose a discount.</p>	<p><b>(a) The Proposed Regulation Penalizes One-half to Two-thirds of the State’s Insureds</b></p> <p>The proposed regulation is not intended to change the substantive terms of the current regulation. Insurance Code section 1861.02, subdivision (c) prohibits use of prior insurance in determining automobile rates, premiums or insurability. The proposed regulation simply clarifies the definition of persistency.</p>

<p><b>(b) The Regulation Unfairly Favors Large and Established Insurers</b></p> <p>The commentators assert that large and established insurers will have more insureds and will therefore be able to offer their existing customers persistency discounts to the disadvantage of small and newer insurers.</p>	<p><b>(b) The Regulation Unfairly Favors Large and Established Insurers</b></p> <p>California Insurance Code Section 1861.02(c) prohibits offering new customers a “persistency” discount. Allowing a company to offer a persistency discount to customers that maintain insurance with the insurer offering the discount reflects the fact that the costs of renewing business are less than the cost of acquiring a new customer. It is reasonable that consumers should receive some benefit for those lower costs. A company need not be at a competitive disadvantage because it is unable to offer new customers a persistency discount. Persistency is one small portion of the overall rating scheme. Companies wishing to draw new business from their competitors can offer other permissible discounts and competitive service.</p>
--	--

**Comment No. 3:**

**Commentator:** Dick Hodge

**Date of Comment:** February 25, 2002

**Type of Comment:** Written

<p><b>Summary of Comment:</b></p>	<p><b>Response to Comment:</b> The Commissioner has considered the comment and has not changed the proposed regulations in response to the comment.</p>
<p><b>(a) The Proposed Regulation as a Penalty for Changing Insurers</b></p> <p>The commentator asserts that the regulation constitutes a penalty to insureds who wish to change insurers.</p>	<p><b>(a) The Proposed Regulation as a Penalty for Changing Insurers</b></p> <p>See Response to comment 2(a).</p>

///

///

///

///

**Comment No. 4:**

**Commentator:** Jim DeVito, Progressive Insurance Companies

**Date of Comment:** February 20, 2002

**Type of Comment:** Written

<p><b>Summary of Comment:</b></p> <p>Note: Progressive’s comment refers to input by the Personal Insurance Federation of California. Those comments were not submitted in response to the proposed regulatory language. Rather, they were submitted in response to a request for input on persistency that was completed prior to the CDI’s notice of hearing in this matter. The request for input did not contain the currently proposed regulatory language, but did contain similar language, as well as language for a regulation proposed by the Foundation for Taxpayer and Consumer Rights. Those comments, which are included in the rulemaking file, were the same arguments as made in Progressive’s issues (a), (b), (c) and (d).</p>	<p><b>Response to Comment:</b> The Commissioner has considered the comment and has not changed the proposed regulations in response to the comment.</p>
<p><b>(a) The Form of the Current Regulation is Adequate</b></p> <p>The commentator asserts that the current regulation (California Code of Regulations, Title 10, Section 2632.5(d)) which provides no definition of “persistency” is adequate and should not be changed.</p>	<p><b>(a) The Form of the Current Regulation is Adequate</b></p> <p>As evidenced by the comments of insurers, such as Progressive, which currently provide persistency discounts to new customers, the current regulation does not provide adequate guidance to insurers. California Insurance Code Section 1861.02(c) prohibits providing new customers a “persistency discount.” The proposed regulation makes clear the only legally acceptable interpretation of California Code of Regulations, Title 10, Section 2632.5(d)(11).</p>
<p><b>(b) The Concept of Persistency Distinguished from the Absence of Prior Insurance</b></p> <p>The commentator asserts that the concept of persistency is different from the concept of absence of prior insurance. He asserts that persistency is continuity of insurance, whereas absence of insurance is unrelated to maintenance of insurance.</p>	<p><b>(b) The Concept of Persistency Distinguished from the Absence of Prior Insurance</b></p> <p>Application of a persistency discount to new customers still results in higher premiums and disadvantageous rating of those without prior insurance, in violation of California Insurance Code Section 1861.02(c). New customers without prior insurance cannot qualify for a</p>

	“persistency discount” and are thus charged greater premium because of application of one factor – the absence of prior insurance.
<b>(c) Relationship to Risk of Loss</b>  The commentator asserts that there is evidence of an actuarial relationship between risk of loss and maintenance of insurance. The commentator asserts that the court of appeals decision in <i>Spanish Speaking Citizens Council v. Low</i> (1 <sup>st</sup> Dist., 2001) 85 Cal. App. 4th 1179; 103 Cal. Rptr. 2d 75 (referred to by the commentator as <i>Spanish Speaking Citizens v. Quackenbush</i> ) favors interpretations of statute that preserve a substantial relationship to risk of loss.	<b>(c) Relationship to Risk of Loss</b>  The fact that there may be a probabilistic relationship between maintaining insurance and risk of loss does not override the policy created by California Insurance Code Section 1861.02(c). Because of a variety of policies not all factors may be considered in determining insurance rates, regardless of whether there is a correlation between the class and the risk of loss.
<b>(d) Effect on Competition</b>  The commentator asserts that the regulation will inhibit competition among insurers.	<b>(d) Effect on Competition</b>  See response to comment 2(b).

### **Comment No. 5:**

**Commentator:** Drew E. Pomerance; Roxborough, Pomerance & Nye

**(c) Date of Comment:** February 26, 2002

**Type of Comment:** Written

<b>Summary of Comment:</b>	<b>Response to Comment:</b> The Commissioner has considered the comment and has not changed the proposed regulations in response to the comment.
<b>(a) Ambiguity of Regulatory Language Regarding “Proof of Prior Insurance”</b>  The commentator is satisfied with the definition of “persistency” contained in the proposed regulation. However, the commentator asserts that the language “ <i>however when such evidence concerns proof of prior insurance, this section shall apply</i> ” is ambiguous. Another commentator has suggested that this paragraph be stricken entirely because it is “unnecessarily ambiguous.”	<b>(a) Ambiguity of Regulatory Language Regarding “Proof of Prior Insurance”</b>  The Commissioner has considered and rejects the comment that the language in paragraph 2 of the proposed regulation is ambiguous. It is possible for an insurer to use prior insurance as a means of verifying driving safety history. (See RH-01015532.) If those methods of verification prevent consumers without prior insurance from obtaining insurance, or would affect the rate offered a consumer, RH-402 would prohibit that practice.

**Comment No. 6:**

**Commentator:** Jeffrey J. Fuller and Janine Gibford, Assoc. of California Insurance Companies

**Date of Comment:** February 27, 2002

**Type of Comment:** Written

<b>Summary of Comment:</b>	<b>Response to Comment:</b> The Commissioner has considered the comment and has not changed the proposed regulations in response to the comment.
<b>(a) Actuarial Justification for Use of Prior Insurance and Consistency with Proposition 103</b>  The commentators assert that use of prior insurance as an optional rating factor, through application of the optional persistency rating factor, is actuarially justified and consistent with the purposes of Proposition 103.	<b>(a) Actuarial Justification for Use of Prior Insurance and Consistency with Proposition 103</b>  Notwithstanding the question of whether, taken as an non-differentiated whole, previously uninsured drivers are a poorer risk than the previously insured, allowing rating of insureds based on whether or not they previously had insurance is contrary to the intent and language of California Insurance Code Section 1861.02(c). Even if drivers with an absence of prior insurance present a greater risk of loss, this factor cannot be considered in rating such drivers because a statute specifically precludes such a practice.
<b>(b) When Insurers Offer New Insureds Persistency Discounts Persons without Prior Insurance Are Not Penalized</b>  The commentators also assert that persons without prior insurance are not financially penalized. The commentators assert that small insurers will be unable to offer rates that attract insureds from large established insurers, because of a pricing advantage resulting from application of the persistency discount.	<b>(b)When Insurers Offer New Insureds Persistency Discounts Person without Prior Insurance Are Not Penalized</b>  Under California ratemaking concepts, a company's class plan is revenue neutral. Therefore, a discount to one group of persons based on a particular characteristic results in a surcharge to those who do not meet such a qualification. The costs of a discount to a person previously insured is borne by those who do not have prior insurance. The use of the discount proposed by the commentators, therefore, is in effect a surcharge to those without prior insurance. The use of a discount for those remaining with the insurer applying the persistency discount reflects the decreased costs of renewing an insured, as opposed to the

	cost of recruiting and initially underwriting a new insured.
<p><b>(c) The Proposed Regulation as Unreasonably Discriminatory Against New Customers With Prior Insurance</b></p> <p>The commentators also assert that prohibiting use of prior insurance with other insurers as a basis for application of the persistency discount unreasonably discriminates against insureds wishing to change insurance companies.</p>	<p><b>(c) The Proposed Regulation as Unreasonably Discriminatory Against New Customers With Prior Insurance</b></p> <p>The proposed regulation does not unreasonably discriminate against insureds desiring to change insurance companies. It places any company's new customers who were previously uninsured on an even footing with its new insureds who were previously insured. While the general intent of Proposition 103 was to focus on an insured's driving history, it also clearly intended to give drivers without prior insurance an opportunity to obtain insurance. The Commissioner is not free to overrule California Insurance Code Section 1861.02(c).</p>
<p><b>(d) The Proposed Regulation as an Impediment to Investigation of Insureds</b></p> <p>The commentators assert that the proposed regulation would prevent insurers from verifying anything about a new insured's prior insurance history, thereby preventing insurers from adequately verifying an insured's prior driving safety record.</p>	<p><b>(d) The Proposed Regulation as an Impediment to Investigation of Insureds</b></p> <p>Nothing in RH402 prohibits use of prior insurance for the mere verification of information. The Commissioner has proposed another regulation, RH01015532, which sets out allowable methods of verification of driving safety record. California Code of Regulation Title 10, Sections 2632.13 and 2632.5 allow use of information from a prior insurer for some purposes.</p>

**Comment No. 7:**

**Commentator:** Lorelle Kitzmiller, Executive Director, American Agents Alliance ("AAA")

**Date of Comment:** February 22, 2002

**Type of Comment:** Written

<b>Summary of Comment:</b>	<b>Response to Comment:</b> The Commissioner has considered the comment and has not changed the proposed regulations in response the to comment.
----------------------------	--

<p><b>(a) The Rates for New Insureds Who Have Insurance with Another Insurer will Increase Under the Effect of the Proposed Regulation</b></p> <p>The elimination of persistency discounts for new customers, who previously had insurance with other insurers, will result in higher insurance rates for consumers who change insurers. AAA asserts that such a result is contrary to the purposes of Proposition 103.</p>	<p><b>(a) The Rates for New Insureds Who Have Insurance with Another Insurer will Increase Under the Effect of the Proposed Regulation</b></p> <p>See response to Comment 2(b).</p>
<p><b>(b) The Proposed Regulation Will Inhibit Competition Among Insurers</b></p> <p>The elimination of persistency discounts for new customers will limit the ability of consumers to change insurers, and inhibit competition in personal automobile insurance.</p>	<p><b>(b)The Proposed Regulation Will Inhibit Competition Among Insurers</b></p> <p>See response to Comment 2(b).</p>
<p><b>(c) The Proposed Regulation Will Limit the Number of Insurers in the Market</b></p> <p>The proposed regulation may force some insurers to leave the market. Insurers contemplating entering the market will be discouraged from entering the market, because they are unable to draw insureds from other insurers, because they cannot match the rates with internal persistency discounts.</p>	<p><b>(c) The Proposed Regulation Will Limit the Number of Insurers in the Market</b></p> <p>The comment is premised upon speculation that insurers will not be able to draw new business from other insurers. The Commissioner rejects the premise that the regulation will unduly limit competition. See also the response to Comment 1(a).</p>

**Comment No. 8:**

**Commentator:** Douglas L. Hallett, Mercury Insurance Group

**Date of Comment:** February 27, 2002

**Type of Comment:** Written

<b>Summary of Comment:</b>	<b>Response to Comment:</b> The Commissioner has considered the comment and has not changed the proposed regulations in response to the comment.
----------------------------	--

<p><b>(a) The Proposed Regulation as a Restriction on Competition</b></p> <p>The commentator asserts that the Commissioner should not adopt the proposed regulation because precluding application of a persistency discount based upon prior insurance will restrict competition in the automobile insurance market.</p>	<p><b>(a) The Proposed Regulation as a Restriction on Competition</b></p> <p>See response to comment 2(b).</p>
<p><b>(b) The Proposed Regulation as an Inhibitor of Various Policy Concerns</b></p> <p>The commentator asserts that allowing a broad interpretation of the term “persistency,” including use of prior insurance or lack thereof as a rating factor furthers the following policy concerns:</p> <p>(1) Rewarding individual conduct (the maintenance of insurance);</p> <p>(2) “Incentivizing compliance with the mandatory insurance law”;</p> <p>(3) reducing acquisition costs;</p> <p>.</p>	<p><b>(b) The Proposed Regulation as an Inhibitor of Various Policy Concerns</b></p> <p>(1) Rewarding individual conduct (the maintenance of insurance)</p> <p>The Commissioner acknowledges that giving a credit to the new insured with prior insurance is a reward for maintaining insurance. It may act as an incentive to the maintenance of insurance. However, it is not the only policy concern expressed by Proposition 103 generally, and specifically as codified in California Insurance Code Section 1861.02(c). The competing concern of encouraging the uninsured to join the pool of insured drivers is furthered by the proposed regulation. Increasing the pool of insured drivers will ultimately benefit all insured persons, by lowering the cost of uninsured/under insured motorist coverage.</p> <p>(2) “Incentivizing” compliance with mandatory insurance laws</p> <p>This appears to be another way of stating that it rewards maintenance of insurance and thereby encourages purchase of insurance. See part (1) above.</p> <p>(3) Reducing acquisition costs</p> <p>A discount for persons with prior insurance</p>

<p>(4) rejection of the proposed regulation will enhance competition.</p>	<p>reduces the acquisition costs for the new insured with prior insurance. However, it does so to the disadvantage of the previously uninsured, and in violation of California Insurance Code Section 1861.02(c). In addition the insurer does not experience reduced acquisition costs for new policyholders.</p> <p>(4) rejection of the proposed regulation will enhance competition</p> <p>See response to comment 2(b).</p>
<p><b>(c) Use of Prior Insurance as a Reward Not a Penalty</b></p> <p>The commentator asserts that allowing use of prior insurance rewards persons with continuous insurance coverage. It does not penalize those without prior insurance.</p>	<p><b>(c) Use of Prior Insurance as a Reward Not a Penalty</b></p> <p>Under California ratemaking principles, a company's class plan is revenue neutral. Therefore, a discount to one group of persons based on a particular characteristic, results in a surcharge to those who do not meet such a qualification. The costs of a discount to a person previously insured is borne by those who do not have prior insurance. The use of the discount proposed by the commentators, therefore, is in effect a surcharge to those without prior insurance. The use of a discount for those remaining with the insurer applying the persistency discount reflects the decreased costs of renewing an insured, as opposed to the cost of recruiting and initially underwriting a new insured.</p>
<p><b>(d) The Proposed Regulation Is Not Required By CIC §1861.02(c)</b></p> <p>The Commentator asserts that California Insurance Code Section 1861.02 (c) cannot be interpreted to mean that absence of prior insurance with other insurers is prohibited as a rating factor. The commentator asserts that the language "<i>in and of itself</i>", contained in California Insurance Code Section 1861.02 (c), must be interpreted to mean that absence of prior insurance is prohibited as a rating factor only if there are no other rating factors. The commentator concludes that the prohibition</p>	<p><b>(d) The Proposed Regulation Is Not Required By CIC §1861.02(c)</b></p> <p>The commentator's interpretation of California Insurance Code Section 1861.02 (c) reads the statute as: "The absence of prior automobile insurance coverage, ..., shall not be <b>the</b> criterion ..." [emphasis shows commentator's implied change in the statute]. The statute refers to "<b>a</b> criterion". [Emphasis added]. That is to say the absence of prior insurance cannot be applied as a rating factor at all.</p> <p>The commentator asserts that the language "<i>in</i></p>

<p>contained in California Insurance Code Section 1861.02 (c) applies only if the sole rating factor available is prior insurance</p>	<p><i>and of itself</i>’ contained in California Insurance Code Section 1861.02 (c), must be interpreted to mean that absence of prior insurance is prohibited as a rating factor only if there are no other rating factors, and the only rating factor available is prior insurance. The Commissioner respectfully disagrees with this interpretation. The commentator does not specify whether his reference to other rating factors refers to the mandatory rating factors specified in California Insurance Code Sections 1861.02(a) (1), (2) and (3), or to the optional rating factors which California Insurance Code Section 1861.02 (a) (4) authorizes the Commissioner to adopt.</p> <p>The commentator’s assertion that California Insurance Code Section 1861.02(c) applies only if there are no other rating factors suggests a situation that cannot occur. There cannot be a situation in which there are no other rating factors available. There are always the three mandatory Rating factors established by Proposition 103. [See California Insurance Code Section 1861.02(a)(1),(2) and (3).]</p> <p>The commentator’s interpretation of California Insurance Code Section 1861.02 (c) makes that section meaningless. Proposition 103 requires application of the mandatory rating factors. Therefore, there cannot be a situation in which there are no other rating factors, and the absence of prior insurance would never be prohibited. It is an undisputed rule of statutory interpretation that holds that a reasonable interpretation of any statute should not make the statute, or another statute, meaningless. [See <i>Hale v. McGettigan</i> (1896) 114 Cal. 112, 118; 45 P. 1049, 1051.]</p> <p>If the commentator intends to suggest that the Commissioner has no authority to promulgate an optional rating factor prohibiting use of prior insurance in rating and underwriting the commentator ignores the broad authority of the Commissioner to adopt optional rating factors. (See <i>Spanish Speaking Citizens Foundation, Inc. v. Low</i> (2000) 85 Cal.App.4<sup>th</sup> 1179, 1187 [103</p>
---	---

	<p>Cal. Rptr. 2d 75].) However, the Commissioner is bound by the restrictions of California Insurance Code Section 186.02(c). The clear interpretation of the statute's prohibition on use of "prior insurance" is that the term "prior insurance" precludes consideration of prior insurance with other insurers, but that the term "prior insurance" does not imply a prohibition on renewals of a policy with the same insurer or its affiliate.</p>
<p><b>(e) The Statute Is Sufficiently Clear</b></p> <p>Attached to the commentator's letter of February 27, 2002 is a letter to the Commissioner dated September 17, 2001. That letter was not in response to this notice of proposed action and public hearing. The September 17, 2002 letter raises two arguments not included in the February 27, 2002 letter. The first argument is that no regulation is necessary because the statute, Insurance Code Section 1861.02(c), is sufficiently clear.</p>	<p><b>(e) The Statute Is Sufficiently Clear</b></p> <p>The fact that consumer groups and various insurers have submitted comments on this regulation with varying interpretations of Insurance Code Section 1861.02(c) is evidence that the interpretation of the statute in light of the regulatory scheme is necessary.</p>
<p><b>(f) The Proposed Regulation Will Lead To Unfairly Discriminatory Rates</b></p> <p>The second argument included in the September 17, 2001 letter that is not included in the February 27, 2002 letter is that prohibiting persistency discounts for new insureds will lead to unfairly discriminatory rates, in violation of Insurance Code Section 1861.05(a).</p> <p>The commentator asserts that there is a correlation between maintenance of insurance and risk of loss. The commentator asserts that that correlation exists for new customers with prior insurance and an insured's long-standing customers. The commentator asserts that to allow a discount for an insured's customers, on renewal, and not allow that discount to new customers is unfairly discriminatory.</p>	<p><b>(f) The Proposed Regulation Will Lead To Unfairly Discriminatory Rates</b></p> <p>What is "unfairly discriminatory" under California Insurance Code 1861.05(a) must be determined in a manner consistent with California Insurance Code Section 1861.02(c). Because California Insurance Code Section 1861.02(c) precludes use of prior insurance in rating and qualification for insurance, the restriction cannot be construed as "unfairly discriminatory."</p> <p>The Commissioner cannot ignore the language of Insurance Code Section 1861.02(c).</p>

### **Comment No. 9**

**Commentator:** Douglas A. Lutgen, CSAA Inter-Insurance Bureau

**Date of Comment:** February 28, 2002

**Type of Comment:** Written

<b>Summary of Comment:</b>	<b>Response to Comment:</b> The Commissioner has considered the comment and has not changed the proposed regulations in response to the comment.
<p><b>(a) The Bright Line Rule of Continuous Insurance is Unduly Harsh in Some Circumstances</b></p> <p>The commentator asserts that some insureds may have lapses in insurance that would prevent their long time insurer from providing them a persistency discount. The commentator points to inadvertent brief lapses in coverage, such as those which befall military personnel who cancel their insurance when transferred overseas and then return to their previous insurer.</p> <p>The commentator notes that some consumers may leave their current insurer based on the “lowball” estimate by unscrupulous producers. Those consumers may learn after the insurer completes its investigation and underwriting process that the policy they have purchased is more expensive than the coverage with the company the insured has just left. The commentator urges that a six-month grace period be included with the regulation. The six-month period is based on the average length of a policy. This would allow consumers dissatisfied with a new insurer to return to the previous insurer with a persistency discount.</p>	<p><b>(a) The Bright Line Rule of Continuous Insurance is Unduly Harsh in Some Circumstances</b></p> <p>The Commissioner has considered the comment but has not adopted its recommendations. Insurance Code Section 1861.02(c) does not provide for an exception to the prohibition on the use of prior insurance as a rating factor. The Commissioner is of the view that "persistency," in its commonly understood form, means to be continuously insured by the same insurance company. A lapse of insurance is not “continuous.” The policy of California Insurance Code Section 1861.02(c) is best served by a regulation that implements its plain meaning, and does not open the possibility of numerous means of avoiding compliance.</p>
<p><b>(b) The Proposed Regulation is Ambiguous as to Whether Changes in Policy Terms with the Same Insurer are not Renewals</b></p> <p>The commentator asserts that the use of the term “renewal” in the first sentence of the proposed regulation is ambiguous. The commentator suggests that the regulation can be read to mean that an insured that “switches</p>	<p><b>(b) The Proposed Regulation is Ambiguous as to Whether Changes in Policy Terms with the Same Insurer are not Renewals</b></p> <p>The Commissioner respectfully disagrees that the proposed regulation is ambiguous. After the first sentence, which the commentator focuses on, comes the second sentence, which reads: “Persistency credit may <b>also</b> be applied when</p>

<p>to a different type of automobile insurance within the same company, such that the policy is actually newly-issued” would not fall under the technical definition of “renewal.” The commentator provides as an example, situations where a person changes “from a regular owner’s policy to a named non-owner policy.” The commentator submitted proposed alterations to the regulatory language.</p>	<p>issuing a separate new automobile policy for a person who is not the named insured on a policy, but is otherwise currently insured.” (Emphasis added.) By stating “also,” the regulation makes clear that technical “renewals” are not the only method by which an individual may receive persistency credit. The proposed regulation makes clear that an individual seeking “a separate new automobile policy” may receive persistency credit, so long as the individual is “otherwise currently insured.” Currently insured is also defined by the proposed regulation, and encompasses situations like the commentator’s proposed hypothetical, where a person changes from a regular owner’s policy to a named non-owner policy. The proposed regulation makes clear that “currently insured” “means a person who is presently covered for automobile insurance by the insurer or affiliate...” Thus, the commentator’s request for amended language is unnecessary.</p>
--	---

### **Comment No. 10**

**Commentator:** Ronald S. Veltman, 21<sup>st</sup> Century Insurance

**Date of Comment:** February 28, 2002

**Type of Comment:** Written

<b>Summary of Comment:</b>	<b>Response to Comment:</b> The Commissioner has considered the comment and has not changed the proposed regulations in response to the comment.
<p><b>(a) The Use of Prior Insurance as a Rating Factor is Actuarially Supported</b></p> <p>The commentator asserts that continuous prior insurance with prior insurers, or with the insurer applying the rating factor, should be allowed as a rating factor because there is data that shows a substantial relationship to risk of loss.</p>	<p><b>(a) The Use of Prior Insurance as a Rating Factor is Actuarially Supported</b></p> <p>See response to comment 3(c).</p>

<p><b>(b) The Proposed Regulation Contradicts CIC §1861.02(c)</b></p> <p>The commentator asserts that the term “in and of itself” in California Insurance Code Section 1861.02(c) specifically allows use of prior insurance with other insurers as a rating factor. The commentator asserts that the term “in and of itself” means that prior insurance cannot be used as a rating factor only when it is the sole rating factor available.</p>	<p><b>(b) The Proposed Regulation Contradicts CIC §1861.02(c)</b></p> <p>See response to comment 7(d)</p>
<p><b>(c) The Proposed Regulation Will Preclude the Procedures Authorized by CIC §11580.17</b></p> <p>The Commentator asserts that the proposed regulation will preclude methods of confirming the condition of automobiles, which the legislature has specifically authorized.</p>	<p><b>(c) The Proposed Regulation Will Preclude the Procedures Authorized by CIC §11580.17</b></p> <p>The commentator implies that insurers must rate customers without prior insurance differently than it rates drivers with prior insurance. Nothing in Insurance Code Section 11580.17 requires that the previously uninsured be rated in a manner different from those with prior insurance. The statute sets out conditions under which an insurer can require physical inspection of the condition of vehicles not previously covered for comprehensive and collision coverage. California Insurance Code Section 11580.17 is irrelevant to rating and determining premium.</p>
<p><b>(d) Absence of Prior Insurance as Basis for Surcharge for Inability to Confirm Driving History</b></p> <p>21<sup>st</sup> Century uses proof of prior insurance as a means of verifying prior driving safety history. The commentator states 21<sup>st</sup> Century surcharges drivers who are unable to provide verification of their driving history. The commentator asserts that the proposed regulation will unnecessarily disturb established methods of determining driving safety record.</p>	<p><b>(d) Absence of Prior Insurance as Basis for Surcharge for Inability to Confirm Driving History</b></p> <p>The commentator proposes that insurers should be allowed to impose a condition on the previously uninsured that will automatically impose higher rates on them, and negate the intent of Insurance Code Section 1861.02(c). Any optional rating factors the Commissioner adopts must comply with Insurance Code Section 1861.02(c). Additionally, this issue is addressed in the Commissioner’s proposed accident verification regulation. [(See RH-01015532.)]</p>

<p><b>(e) Persons with Prior Insurance Should Be Rewarded for Maintenance of Insurance</b></p> <p>The commentator asserts that a discount for a new customer who previously maintained insurance is an appropriate recognition and reward for having previously complied with the mandatory insurance laws.</p>	<p><b>(e) Persons with Prior Insurance Should Be Rewarded for Maintenance of Insurance</b></p> <p>The Commissioner acknowledges that certain persons would receive a benefit if their prior insurance were used as a rating factor. The commentator implies that new customers without prior insurance have previously been violating the mandatory insurance laws. This is not necessarily true. Many drivers do not own their vehicle and drive vehicles owned by others, and which are insured. Those persons may have an exemplary driving history, yet they are penalized by insurers who use prior insurance as a rating factor.</p>
<p><b>(f) The Proposed Regulation Will Impede A Competitive Market</b></p> <p>The commentator asserts that the proposed regulation will stifle competition.</p>	<p><b>(f) The Proposed Regulation Will Impede A Competitive Market</b></p> <p>See response to comment 2(b).</p>

**Comment No. 11:**

Commentator: Pamela Pressley, Foundation for Taxpayer and Consumer Rights

**Date of Comment:** February 28, 2002

**Type of Comment:** Written

<p><b>Summary of Comment:</b></p>	<p><b>Response to Comment:</b> The Commissioner has considered the comment and has not changed the proposed regulations in response to the comment.</p>
<p><b>(a) The Proposed Regulation Does Not Define Persistency and is, Therefore, Vague</b></p> <p>The commentator asserts that the proposed regulation is ambiguous and vague. The commentator asserts that “persistency” is not defined in the regulation and it therefore will not prevent insurers from practices that violate Insurance Code Section 1861.02(c).</p>	<p><b>(a) The Proposed Regulation Does Not Define Persistency and is, Therefore, Vague</b></p> <p>While the term “persistency” is not explicitly defined, the regulation creates an operative definition. The word “persistency” has historically been understood to mean to continue or persist. The term is commonly used and understood in the insurance industry to mean remaining with an insurer. Over time some insurers have expanded the meaning of the term such that it impermissibly conflicts with</p>

	California Insurance Code Section 1861.02(c).
<p><b>(b) The Regulation Will Allow Insurers to Use Prior Insurance as Part of a Period of Persistence in Violation of Insurance Code Section 1861.02(c)</b></p> <p>The commentator asserts that insurers may offer a persistency discount on the first renewal by including, as part of the period of persistency, prior coverage with other insurers.</p>	<p><b>(b) The Regulation Will Allow Insurers to Use Prior Insurance as Part of a Period of Persistence in Violation of Insurance Code Section 1861.02(c)</b></p> <p>Under the proposed regulation insurers might offer a persistency discount on the first renewal, however, they would not be able to utilize the prior insurance with another carrier as part of the period of persistency. On page 10 of the comments submitted, the commentator correctly interprets the appropriate language from the regulation which would preclude an insurer's use of prior insurance under the hypothetical posed by the commentator. The language of the proposed regulation is clear on this point. The proposed regulation prohibits an insurer from applying a persistency credit "<b>at any time</b>, when based in whole <b>or in part</b> upon automobile insurance coverage provided by a non-affiliated insurer." [emphasis added]. The use of the terms "at any time" and "or in part" specifically precludes use of prior insurance as part of the period of persistence.</p>
<p><b>(c) The Department of Insurance Should Also Notice and Publish the Regulatory Language Proposed by Mark Savage and the S.C.L.C.</b></p> <p>The commentator believes that the Department of Insurance, by proposing the current regulation, has not gone far enough to prevent insurance companies from using the absence of prior insurance to the detriment of consumers, and therefore asks the Department to also adopt the S.C.L.C.'s proposed regulatory language.</p>	<p><b>(c) The Department of Insurance Should Also Notice and Publish the Regulatory Language Proposed by Mark Savage and the S.C.L.C.</b></p> <p>See response to comment 11(b).</p>

///

///

///

///

**Comment No. 12:**

**Commentator:** Mark Savage, Southern Christian Leadership Conference and Consumers Union of U.S., Inc.

**Date of Comment:** February 28, 2002

**Type of Comment:** Written

<b>Summary of Comment:</b>	<b>Response to Comment:</b> The Commissioner has considered the comment and has not changed the proposed regulations in response to the comment.
<p><b>(a) The Proposed Regulation Should Include Explicit Prohibitions on the Use of Prior Insurance for Any Rating Purpose</b></p> <p>The commentator asserts that the regulation does not go far enough in precluding the use of prior insurance for rating purposes. The commentator asserts that the regulation may allow insurers to place customers without prior insurance in lower tiers, or with affiliated companies offering less desirable and more costly coverage.</p>	<p><b>(a) The Proposed Regulation Should Include Explicit Prohibitions on the Use of Prior Insurance for Any Rating Purpose</b></p> <p>An insurer can apply only those rating factors that are the mandatory rating factors of California Insurance Code Sections 1861.02(a) (1) (2) and (3), or the optional rating factors specifically adopted by the Commissioner pursuant to California Insurance Code Section 1861.02 (a) (4). The regulation specifically authorizes only the application of a credit for persistency. It authorizes no other use of persistency in rating. An insurer using persistency in any other manner would be using an unapproved rating factor, and would be in violation of existing law. Additionally, for Good Drivers, California Insurance Code Section 1861.16(b) requires insurer groups to offer the lowest rate within the group, and California Code of Regulations Title 10, Section 2360.0-2360.7 address similar concerns.</p>
<p><b>(b) The Department of Insurance Should Also Notice and Publish the Regulatory Language Proposed by the Commentator.</b></p> <p>The commentator believes that the Department of Insurance, by proposing the current regulation, has not gone far enough to prevent insurance companies from using the absence of prior insurance to the detriment of consumers, and therefore asks the Department to also adopt the commentator's proposed regulatory language.</p>	<p><b>(b) The Department of Insurance Should Also Notice and Publish the Regulatory Language Proposed by the Commentator.</b></p> <p>The commentator's proposed language would prohibit any insurance company from considering whether a consumer has evidence of prior insurance for any reason whatsoever. However, under the current state of the law, insurers are able to consider a consumer's past insurance for various reasons, so long as the insurer is not using the absence of prior</p>

	insurance to affect the rates, premiums or insurability. (See, e.g. Cal. Code of Regs., tit.10, § 2632.13, subds. (f)&(g).) Thus, an insurer may check a consumer's prior insurance history as one possible way to obtain an accident verification history, so long as a consumer is not <b>required</b> to provide prior insurance history in order to verify an accident history (See RH-01015532). Likewise, as part of inspecting a vehicle, an insurer may check prior insurance policies only to determine whether or not vehicles were previously insured for comprehensive or collision coverage. (See Ins. Code § 11580.17.)
<p><b>(c) The Department Should Delete the Second Paragraph of the Proposed Language.</b></p> <p>The commentator believes that the second paragraph of the proposed regulatory language should be deleted, because it is “unnecessarily ambiguous.”</p>	<p><b>(c) The Department Should Delete the Second Paragraph of the Proposed Language.</b></p> <p>See response to comment 4(a).</p>
<p><b>(d) The Proposed Regulation Should Also Require That Insurers Provide Data Proving a Risk of Loss, and That the Persistency Factor Does Not Overlap With Another Rating Factor.</b></p> <p>The commentator suggests that the Department must place the burden on the insurer to justify persistency's substantial relationship to the risk of loss, and prove that the rating factor does not overlap with other factors being used.</p>	<p><b>(d) The Proposed Regulation Should Also Require That Insurers Provide Data Proving a Risk of Loss, and That the Persistency Factor Does Not Overlap With Another Rating Factor.</b></p> <p>The commentator's concerns are currently satisfied by other provisions in the California Code of Regulations, and therefore no alteration in the proposed regulatory language is necessary to satisfy these concerns. (See <i>Spanish Speaking Citizens Foundation, Inc. v. Low</i> (2000) 85 Cal.App.4<sup>th</sup> 1179, 1235 [103 Cal. Rptr. 2d 75].) This information is required as part of an insurer's Class Plan.</p>

**Comment No. 13:**

**Commentator:** Samuel Sorich, National Association of Independent Insurers

**Date of Comment:** February 28, 2002

**Type of Comment:** Written

<b>Summary of Comment:</b>	<b>Response to Comment:</b> The Commissioner has considered the comment and has not changed the
----------------------------	---

	proposed regulations in response to the comment.
<p><b>(a) The Proposed Regulation Will Prevent Insureds from Obtaining A Discount by Maintenance of Insurance</b></p> <p>The commentator asserts that the loss of a persistency credit to insureds changing companies will result in higher rates for consumers changing insurers.</p>	<p><b>(a) The Proposed Regulation Will Prevent Insureds From Obtaining A Discount by Maintenance of Insurance</b></p> <p>See response to Comment 2(b).</p>
<p><b>(b) The Proposed Regulation will Prohibit Fair Rates and Competition</b></p> <p>The commentator asserts that the proposed regulation will discourage competition and lead to unfair rates.</p>	<p><b>(b) The Proposed Regulation will Prohibit Fair Rates and Competition</b></p> <p>See response to comments 2(a) and 2(b).</p>
<p><b>(c) The Proposed Regulation Does Not Take Into Account Actuarial Justification for Charging Higher Rates to Insureds Who Do Not Remain with One Company for an Extended Period, They Are Poorer Risks Than Those Insureds Maintaining Insurance with One Company for an Extended Period</b></p> <p>The commentator asserts that actuarial evidence shows that “transient” insureds who change companies frequently are poorer risks than insureds who remain with one company for an extended time.</p>	<p><b>(c) The Proposed Regulation Does Not Take Into Account Actuarial Justification for Charging Higher Rates to Insureds Who Do Not Remain with One Company for an Extended Period, They Are Poorer Risks Than Those Insureds Maintaining Insurance with One Company for an Extended Period</b></p> <p>See response to comment 3(c).</p>
<p><b>(d) The Proposed Regulation is too Inflexible, and Will Prevent Insureds with Brief Lapses in Coverage from Receiving a Persistency Discount.</b></p> <p>The commentator asserts that the proposed regulation will be unfair to insureds who have brief lapses in coverage, but have generally maintained insurance with one insurer.</p>	<p><b>(d) The Proposed Regulation is too Inflexible, and Will Prevent Insureds with Brief Lapses in Coverage from Receiving a Persistency Discount.</b></p> <p>See response to comment 8(a).</p>

///

///

///

**Comment No. 14:****Commentator:** Bob Gnaizda, Greenlining Institute**Date of Comment:** February 28, 2002**Type of Comment:** Written

<b>Summary of Comment:</b>	<b>Response to Comment:</b> The Commissioner has considered the comment and has not changed the proposed regulations in response to the comment.
<p><b>(a) Decision on the Proposed Regulation should Be Delayed to Allow for Comment on Data Cited by Representatives of the Insurance Industry</b></p> <p>The Commentator states that the Greenlining Institute “supports DOI’s amended regulations on persistency,” however, the Commentator believes that the statistical analysis provided by the insurance industry is flawed. Therefore, the Commentator requests a “forty day opportunity to examine the industry data and have employed a statistical expert to examine such data” or, in the alternative, the DOI should “employ such a statistical expert.”</p>	<p><b>(a) Decision on the Proposed Regulation should Be Delayed to Allow for Comment on Data Cited by Representatives of the Insurance Industry</b></p> <p>Despite the existence of data reflecting a substantial relationship between motorists without prior insurance and the risk of loss, such data must still yield to Insurance Code section 1861.02(c). The Commissioner believes that the proper balance between the insurance industry data and Insurance Code section 1861.02(c) is found in the regulation as currently proposed. Thus, to the extent that the insurance industry’s data conflicts with Insurance Code 1861.02(c), the Commissioner rejects the relevance of the data. (See Response to comment 3(c).)</p>

**Comment No. 15:****Commentator:** Bob Gnaizda, Greenlining Institute**Date of Comment:** February 28, 2002**Type of Comment:** Oral

<b>Summary of Comment:</b>	<b>Response to Comment:</b> The Commissioner has considered the comment and has not changed the proposed regulations in response to the
----------------------------	---

	comment.
<p><b>(a) The Commentator states that the Greenlining Institute “...agree[s] with the Department’s position on persistency...”</b></p> <p>The Commentator indicates general support for prohibiting persistency credit, when it is based in whole or in part on a consumer’s prior insurance. (See Transcript, p.5, ln.1-3.) The Commentator refers to such a practice of giving credit for past membership in a group as the “Grandfather Clause.”</p>	<p><b>(a) The Commentator states that the Greenlining Institute “...agree[s] with the Department’s position on persistency...”</b></p> <p>Insofar as the commentator supports the Commissioner’s proposed regulation, no response is required.</p>
<p><b>(b) The Commentator States That It is Unfair For Insurance Companies to Give Preferential Treatment to Long-time Customers, Unless the Amount of Credit Given is Minimal.</b></p> <p>See Transcript, p. 6, lines 3-14.</p>	<p><b>(b) The Commentator States That It is Unfair For Insurance Companies to Give Preferential Treatment to Long-time Customers, Unless the Amount of Credit Given is Minimal.</b></p> <p>Part of the cost associated with insurance premiums is derived from the expense of issuing an insurance policy for a particular insurance applicant. For persons who have been with the same company over a period of time, the costs to maintain an insurance policy with a current insured are less than the costs to open up a new file and obtain the data needed to issue an insurance policy for an applicant who is not currently insured by the issuing insurance carrier. Proposition 103 was designed, in part, to make insurance affordable for all consumers. (<i>Spanish Speaking Citizens Foundation, Inc. v. Low</i> (2000) 85 Cal.App.4<sup>th</sup> 1179, 1193-94 [103 Cal. Rptr. 2d 75].) The savings in cost for persons who have been “persistently” insured by the same carrier are, therefore, appropriately passed on to the consumer in order to make insurance more affordable. Whether those savings are “minimal” or substantial, the Commissioner is of the belief that consumers may receive a discount so long as it relates to the savings received and does not interfere with the prohibition against using the absence of prior insurance to affect premiums. Because this proposed regulation places those without prior insurance and those with prior insurance with another carrier on equal footing, the absence of</p>

	prior insurance is not being used to affect premiums.
--	---

**Comment No. 16:**

**Commentator:** Samuel Sorich, National Association of Independent Insurers

**Date of Comment:** February 28, 2002

**Type of Comment:** Oral

<b>Summary of Comment:</b>	<b>Response to Comment:</b> The Commissioner has considered the comment and has not changed the proposed regulations in response to the comment.
<p><b>(a) The Proposed Regulation Will Prevent Insureds from Obtaining A Discount by Maintenance of Insurance</b></p> <p>The commentator asserts that the loss of a persistency credit to insureds changing companies will result in higher rates for consumers changing insurers.</p>	<p><b>(a) The Proposed Regulation Will Prevent Insureds From Obtaining A Discount by Maintenance of Insurance</b></p> <p>See response to comment 2(b).</p>
<p><b>(b) The Proposed Regulation will Prohibit Fair Rates and Competition</b></p> <p>The commentator asserts that the proposed regulation will discourage competition and lead to unfair rates.</p>	<p><b>(b) The Proposed Regulation will Prohibit Fair Rates and Competition</b></p> <p>See response to comment 2(a). The commentator suggests that the proposed regulation will deny insurers with prior insurance a discount that they deserve. The Commissioner's intention is to clarify the provisions of California Insurance Code Section 1861.02(c), and assure uniform treatment of the persistency optional rating factor. Allowing drivers changing companies a persistency discount, whether desirable or not, would violate Proposition 103.</p>
<p><b>(c) The Proposed Regulation Does Not Take Into Account The Actuarial Justification for Charging Higher Rates to Insureds Who Do Not Remain with One Company for an Extended Period Because of a Correlation with Increased Risk of Loss for those Insureds As Compared to those</b></p>	<p><b>(c) The Proposed Regulation Does Not Take Into Account The Actuarial Justification for Charging Higher Rates to Insureds Who Do Not Remain with One Company for an Extended Period Because of a Correlation with Increased Risk of Loss for those Insureds As Compared to those</b></p>

<p><b>Insureds Maintaining Insurance with One Company for an Extended Period</b></p> <p>The commentator asserts that actuarial evidence shows that “transient” insureds who change companies frequently are poorer risks than insureds who remain with one company for an extended time.</p>	<p><b>Insureds Maintaining Insurance with One Company for an Extended Period</b></p> <p>See response to comment 3(c).</p> <p>The commentator offered a description of an article by Sholom Feldblum, concluding that persons who maintained prior insurance were a better risk than those who did not have prior insurance. However, the Commissioner is not free to disregard California Insurance Code Section 1861.02(c).</p>
<p><b>(d) The Absence of Prior Insurance is Not a Criterion For Determining Eligibility For Persistency, and Therefore Does Not Violate Insurance Code Section 1861.02, subdivision (c).</b></p> <p>The commentator asserts that the criteria for obtaining a “persistency discount” should be maintenance of insurance with one insurer for an extended period of time. The commentator asserts that under his proposed definition of “persistency” drivers who have continuously maintained insurance, but have frequently switched insurers would not qualify for a “persistency discount.” The commentator asserts that drivers who continuously maintain insurance but frequently change insurers will not be denied a “persistency discount” based upon “absence of prior insurance coverage.” The commentator asserts that they would be denied the persistency discount because of lack of continuous insurance with one company.</p>	<p><b>(d) The Absence of Prior Insurance is Not a Criterion For Determining Eligibility For Persistency, and Therefore Does Not Violate Insurance Code Section 1861.02, subdivision (c).</b></p> <p>See response to comment 6(b).</p>

**Comment No. 17:**

Commentator: Pamela Pressley, Foundation for Taxpayer and Consumer Rights

**Date of Comment:** February 28, 2002

**Type of Comment:** Oral

<p><b>Summary of Comment:</b></p>	<p><b>Response to Comment:</b> The Commissioner has considered the comment and has not changed the</p>
-----------------------------------	--

	proposed regulations in response to the comment.
<p><b>(a) The Proposed Regulation Does Not Define Persistency and is, Therefore, Vague</b></p> <p>The commentator asserts that the proposed regulation is ambiguous and vague. The commentator asserts that “persistency” is not defined in the regulation and therefore will not prevent insurers from practices that violate Insurance Code Section 1861.02(c).</p>	<p><b>(a) The Proposed Regulation Does Not Define Persistency and is, Therefore, Vague</b></p> <p>See response to comment 11(a).</p>
<p><b>(b) The Regulation Will Allow Insurers to Use Prior Insurance as Part of a Period of Persistence in Violation of Insurance Code Section 1861.02(c)</b></p> <p>The commentator asserts that insurers may offer a persistency discount on the first renewal by including, as part of the period of persistency, prior coverage with other insurers.</p>	<p><b>(b) The Regulation Will Allow Insurers to Use Prior Insurance as Part of a Period of Persistence in Violation of Insurance Code Section 1861.02(c)</b></p> <p>See response to comment 11(b).</p>
<p><b>(c) The Department of Insurance Should Also Notice and Publish the Regulatory Language Proposed by Mark Savage and the S.C.L.C.</b></p> <p>The commentator believes that the Department of Insurance, by proposing the current regulation, has not gone far enough to prevent insurance companies from using the absence of prior insurance to the detriment of consumers, and therefore asks the Department to also adopt the S.C.L.C.’s proposed regulatory language.</p>	<p><b>(c) The Department of Insurance Should Also Notice and Publish the Regulatory Language Proposed by Mark Savage and the S.C.L.C.</b></p> <p>See response to Comment 11(b).</p>

**Comment No. 18:**

**Commentator:** Janine Gibford, Assoc. of California Insurance Companies

**Date of Comment:** February 28, 2002

**Type of Comment:** Oral

<b>Summary of Comment:</b>	<b>Response to Comment:</b> The Commissioner has considered the comment and has not changed the proposed regulations in response to the comment.
----------------------------	--

<p><b>(a) Actuarial Justification for Use of Prior Insurance and Consistency With Proposition 103</b></p> <p>The commentator asserts that use of prior insurance as an optional rating factor, through application of the optional persistency rating factor, is actuarially justified and consistent with the purposes of Proposition 103.</p>	<p><b>(a) Actuarial Justification for Use of Prior Insurance and Consistency With Proposition 103</b></p> <p>The Commissioner was not provided with any data which the commentator relied upon in concluding that insureds with prior insurance are better risks for insurers than those insureds without prior insurance. Notwithstanding whether, taken as an non-differentiated whole, previously uninsured drivers are poorer risks than the previously insured, allowing rating of insureds based on whether or not they previously had insurance is contrary to the intent and language of California Insurance Code Section 1861.02(c).</p>
<p><b>(b) By Offering Persistency Discounts to new Customers Persons without Prior Insurance Are Not Penalized, Rather, Persons with Prior Insurance Are Rewarded.</b></p> <p>The commentator also asserts that persons without prior insurance are not financially penalized. The commentator asserts that the goal of persistency is to apply a “discount” but not a “surcharge” in order to reward persons with continuous insurance.</p>	<p><b>(b) By Offering Persistency Discounts to new Customers Persons without Prior Insurance Are Not Penalized, Rather, Persons with Prior Insurance Are Rewarded.</b></p> <p>In California insurance ratemaking requires that rates be determined in a revenue neutral manner. Therefore, a discount to one group of persons based on a particular characteristic results in a surcharge to those who do not meet such a qualification. The costs of a discount to a person previously insured is borne by those who do not have prior insurance. The use of the discount proposed by the commentator, therefore, is in effect a surcharge to those without prior insurance. The use of a discount for those remaining with the insurer applying the persistency discount reflects the decreased costs of renewing an insured, as opposed to the cost of recruiting and initially underwriting a new insured.</p>
<p><b>(c) The Proposed Regulation Harms Market Competition</b></p> <p>The commentator also asserts that prohibiting use of prior insurance with other insurers as a basis for application of the persistency discount unreasonably discriminates against insureds</p>	<p><b>(c) The Proposed Regulation Harms Market Competition</b></p> <p>The proposed regulation does not unreasonably discriminate against insureds desiring to change insurance companies. It places any company’s new customers who were previously uninsured</p>

wishing to change insurance companies.	on an even footing with its new insureds wishing to change insurance companies. The Commissioner must implement California Insurance Code Section 1861.02(c).
--	---

**Comment No. 19:**

**Commentator:** Mark Savage, Southern Christian Leadership Conference and Consumers Union of U.S., Inc.

**Date of Comment:** February 28, 2002

**Type of Comment:** Oral

<b>Summary of Comment:</b>	<b>Response to Comment:</b> The Commissioner has considered the comment and has not changed the proposed regulations in response to the comment.
<p><b>(a) The Proposed Regulation Should Include Explicit Prohibitions on the Use of Prior Insurance for Any Rating Purpose</b></p> <p>The commentator asserts that the regulation does not go far enough in precluding the use of prior insurance for rating purposes. The commentator asserts that the regulation may allow insurers to place customers without prior insurance in lower tiers, or with affiliated companies offering less desirable and more costly coverage.</p>	<p><b>(a) The Proposed Regulation Should Include Explicit Prohibitions on the Use of Prior Insurance for Any Rating Purpose</b></p> <p>See responses to comments 11 (a) and (b).</p>

<p><b>(b) The Proposed Regulation Should Also Require That Insurers Provide Data Proving a Risk of Loss, and That the Factor Does Not Overlap With Another Rating Factor.</b></p> <p>The commentator suggests that the Department must place the burden on the Insurer to justify persistency's substantial relationship to the risk of loss, and prove that the rating factor does not overlap with other factors being used.</p>	<p><b>(b) The Proposed Regulation Should Also Require That Insurers Provide Data Proving a Risk of Loss, and That the Factor Does Not Overlap With Another Rating Factor.</b></p> <p>The commentator's concerns are currently satisfied by the California Code of Regulations, and therefore no alteration in the proposed regulatory language is necessary to satisfy these concerns. (See <i>Spanish Speaking Citizens Foundation, Inc. v. Low</i> (2000) 85 Cal.App.4<sup>th</sup> 1179, 1235 [103 Cal. Rptr. 2d 75].)</p>
--	---

**Comment No. 20:**

**Commentator:** Steve Frisnia, Viking Insurance Company.

**Date of Comment:** February 28, 2002

**Type of Comment:** Oral

<b>Summary of Comment:</b>	<b>Response to Comment:</b> The Commissioner has considered the comment and has not changed the proposed regulations in response to the comment.
<p><b>(a) Maintenance of Insurance Has Relationship to Risk of Loss</b></p> <p>The commentator asserts that there is evidence that there is an actuarial relationship between risk of loss and maintenance of insurance. He asserts that the proposed regulation will force companies to ignore this relationship when rating new customers without prior insurance.</p>	<p><b>(a) Maintenance of Insurance Has Relationship to Risk of Loss</b></p> <p>See response to comment 3(c).</p>
<p><b>(b) The Proposed Regulation Will Increase the Cost of Insurance for Some New Customers</b></p> <p>Insurance rates are increasing and if consumers cannot take advantage of a credit for their prior insurance with a new insurer, insurance may become unaffordable for them.</p>	<p><b>(b) The Proposed Regulation Will Increase the Cost of Insurance for Some New Customers</b></p> <p>See response to comment 2(b).</p>

<p><b>(c) The Proposed Regulation Will Decrease Competition.</b></p> <p>The commentator asserts that the proposed regulation will make it difficult to attract new customers from other companies, and therefore, competition will be decreased.</p>	<p><b>(c) The Proposed Regulation Will Decrease Competition.</b></p> <p>See Response to comment 5(b).</p>
<p><b>(d) The Proposed Regulation will Force Insurers to Charge Unfairly Discriminatory Rates to Persons with Prior Insurance.</b></p> <p>The commentators also assert that prohibiting use of prior insurance with other insurers as a basis for application of the persistency discount unreasonably discriminates against insureds wishing to change insurance companies.</p>	<p><b>(d) The Proposed Regulation will Force Insurers to Charge Unfairly Discriminatory Rates to Persons with Prior Insurance.</b></p> <p>See Response to comment 5(c).</p>

**Comment No. 21:**

**Commentator:** Douglas A. Lutgen, CSAA Inter-Insurance Bureau

**Date of Comment:** February 28, 2002

**Type of Comment:** Oral

<p><b>Summary of Comment:</b></p>	<p><b>Response to Comment:</b> The Commissioner has considered the comment and has not changed the proposed regulations in response to the comment.</p>
<p><b>(a) The Bright Line Rule of Continuous Insurance is Unduly Harsh in Some Circumstances</b></p> <p>The commentator asserts that some insureds may have lapses in insurance that would prevent their long time insurer from providing them a persistency discount. The commentator points to inadvertent brief lapses in coverage, military personnel who cancel their insurance when transferred overseas, and then return to their previous insurer.</p> <p>The commentator notes that some consumers may leave their current insurer based on the “lowball” estimate by unscrupulous producers. Those consumers may learn after the insurer</p>	<p><b>(a) The Bright Line Rule of Continuous Insurance is Unduly Harsh in Some Circumstances</b></p> <p>See response to comment 9(a).</p>

<p>completes its investigation and underwriting process that the policy they have purchased is more expensive than the coverage with the company the insured has just left. The commentator urges that a six-month grace period be included with the regulation. The six-month period is based on the average length of a policy. This would allow consumer dissatisfied with a new insurer to return to the previous insurer with a persistency discount.</p>	
--	--

**Comment No. 22:**

**Commentator:** Ed Levy, American Agents Alliance

**Date of Comment:** February 28, 2002

**Type of Comment:** Oral

<b>Summary of Comment:</b>	<b>Response to Comment:</b> The Commissioner has considered the comment and has not changed the proposed regulations in response to the comment.
<p><b>(a) The Proposed Regulation Will Raise Rates for an Insurer's New Customers</b></p> <p>The commentator asserts that the proposed regulation, by denying new insureds a discount for their prior insurance, will raise insurance rates.</p>	<p><b>(a) The Proposed Regulation Will Raise Rates for an Insurer's New Customers</b></p> <p>The proposed regulation will not inevitably lead to over-all higher rates for consumers. Insurance rates under California law are determined in a "revenue neutral" manner. Therefore, a discount to one group of persons based on a particular characteristic results in a surcharge to those who do not meet such a qualification. Adopting the comment would violate Insurance Code Section 1861.02(c).</p>
<p><b>(b) The Proposed Regulation Will Make It More Expensive to Change Insurers</b></p> <p>The comment urges the Commissioner not to adopt the proposed regulation because it will make it more expensive for consumers to change insurance companies, and will thereby stifle competition, and cause higher insurance rates.</p>	<p><b>(b) The Proposed Regulation Will Make It More Expensive to Change Insurers</b></p> <p>See response to comment 2(b).</p>
<p><b>(c) The Proposed Regulation Will Deter New Insurers From Entering the Market</b></p>	<p><b>(c) The Proposed Regulation Will Deter New Insurers From Entering the Market</b></p>

<p>The commentator asserts that the proposed regulation will be a deterrent to new insurers entering the California market, because they will be unable to attract consumers from the consumer's existing insurer.</p>	<p>See response to Comment 6(c).</p>
<p><b>(d) The Proposed Regulation Is Unfairly Discriminatory</b></p> <p>The commentator asserts that the proposed regulation, by allowing existing customers after a period of coverage with the insurer to receive a persistency discount, but not allowing new customers to receive such a discount, will force insurers to unfairly discriminate against new insureds.</p>	<p><b>(d) The Proposed Regulation Is Unfairly Discriminatory</b></p> <p>See response to comment 5(c).</p>

**Comment No. 23:**

**Commentator:** Michael Fitzgerald, Product Manager, Esurance Company

**Date of Comment:** February 28, 2002

**Type of Comment:** Oral

<p><b>Summary of Comment:</b></p>	<p><b>Response to Comment:</b> The Commissioner has considered the comment and has not changed the proposed regulations in response to the comment.</p>
<p><b>(a) The Commentator Disputes the Assertion that Insurance is Unavailable to California's Uninsured Motorists</b></p> <p>The commentator asserts that it is unclear whether the statistics referenced by Mark Savage, counsel for the Southern Christian Leadership Council and Consumers' Union, Inc. truly reflect lack of access to insurance by California's uninsured motorists.</p> <p>The commentator disputes Mr. Savage's contention that insurance companies have used the absence of prior insurance indirectly to preclude writing coverage for drivers without prior insurance.</p>	<p><b>(a) The Commentator Disputes the Assertion that Insurance is Unavailable to California's Uninsured Motorists</b></p> <p>The Commissioner has not relied upon the statistics cited by Mr. Savage in proposing the current regulation. To the extent that the commentator's comments suggest that insurers have not used the absence of prior insurance in deciding whether or not to issue a persistency credit. See Response to comment 4(b).</p>

<p>The commentator asserts that the uninsured motorists have insurance available, but cannot afford the available insurance.</p>	
<p><b>(b) Prohibiting Persistency Discounts for New Customers Impedes New Insureds' Ability to Draw Customers Away from Established Insurers</b></p> <p>The commentator asserts that established insurers provide customers a discount for remaining with those insurers. The commentator asserts that it will be difficult for new insurers to draw clients from established insurers if they cannot offer new customers a persistency discount.</p>	<p><b>(b) Prohibiting Persistency Discounts for New Customers Impedes New Insurers' Ability to Draw Customers Away from Established Insurers</b></p> <p>See response to comment 6(c).</p>
<p><b>(c) Relationship to Risk of Loss</b></p> <p>The commentator asserts that insurers should be able to offer new customers a persistency discount because there is an actuarial correlation between maintenance of prior insurance and risk of loss.</p>	<p><b>(c) Relationship to Risk of Loss</b></p> <p>See response to comment 3(c).</p>